

**Central Administrative Tribunal
Jabalpur Bench**

RA No.1/06

Jabalpur, this the 31st day of October 2006.

CORAM

Hon'ble Dr. G.C. Srivastava, Vice Chairman

Hon'ble Mr. A.K. Gaur, Judicial Member

1. Union of India through
The general Manager
SEC Railway, Bilaspur.
2. General Manager
SEC Railway
Bilaspur
3. Divisional Railway Manager
SEC Railway
Nagpur.

Review applicants

(By advocate Shri M.N. Banerjee)

Versus

1. Asha Devi Yadav
Widow of Dayalal, EX. Trolleyman
SEC railway
R/o Charegoan
P.O. Nainpur
Dist. Mandla.
2. Master Lokesh Yadav
Son
3. Komita Yadav
Daughter
4. Mashita Yadav
Daughter

Respondents

(By advocate: Shri M.R. Chandra)

ORDER

By Dr.G.C.Srivastava, Vice Chairman

This Review Application has been filed against order dated 16.3.05 of this Tribunal awarding Rs.5 lakhs as ex-gratia lump sum compensation from the respondents. Since applicant No.1 in the OA No.524/04 has already received a sum of Rs.1,84,170/- under Workmen's Compensation Act, the respondents were directed to pay to the applicants the amount of Rs.5 lakhs after adjustment of the amount paid forthwith. The review application has been filed mainly on the ground that the case of Asha Devi and others is not covered by the guidelines issued by the Government and unless and until conditions enumerated in the Office Memorandum dated 11.9.98 are fulfilled, they are not entitled to get ex-gratia lump sum compensation.

2. The facts: Shri Dayalal Yadav, husband of respondent No.1 of this RA was an employee of S.E.C.Railway and was working as Trolleyman. On 14.7.99 while he was pulling trolley, he heard the noise of a train approaching towards the trolley. In a state of confusion he jumped from the trolley and fell down away from the track and sustained head injury. Later he was declared dead in the hospital. The Railways paid Rs.1,84,170/- to the wife of the deceased, on her application, as per the provisions of the Workmen's Compensation Act. The applicant accepted the amount and did not make any claim for further compensation until she filed an application before the Tribunal (OA No.524/04). In that OA, the wife of the deceased claimed that she was entitled to an ex-gratia lump sum compensation of Rs.5 lakh as per the circular dated 5th November 1999 issued by the Railway Board. The Tribunal allowed the OA and vide its order dated 16.3.2005 directed the review applicants to pay the aforesaid ex-gratia compensation of Rs.5 lakh to respondents in this RA after adjustment of the amount already paid (i.e. Rs.1, 84,170/-). This order was assailed by the review applicants before the High Court in W.P.No.14948 of 2005 on the sole ground that the case was not covered by the guidelines issued by the Government, and

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until and unless conditions enumerated in the Office Memorandum dated 11.9.98 are fulfilled, the respondents in the RA were not entitled to get ex-gratia lump sum compensation. The High Court while permitting the petitioners to withdraw the RA granted liberty to seek review of the order of the Tribunal dated 16.3.2005 within 30 days. Thus the review applicants have filed this RA.

3. We have carefully considered the grounds taken in the RA for review of the order of this Tribunal.

4. After the untimely death of the breadwinner, the widow with her 3 minor children was in great financial hardship and therefore she had to accept the immediate monetary assistance allowed under the Workmen's Compensation Act. The wife of the deceased, being an illiterate lady, was unaware of her legal right to claim an ex-gratia compensation of Rs.5 lakh until she filed OA No.504/04. The claim was allowed in the light of the provisions contained in the OM dated 11th September 1998 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, New Delhi. In Para 5 (a) of the OM it is mentioned that "death occurring due to accidents in the course of performance of duties – Rs.5 lakhs. Para 9 of the OM stipulates that "the orders shall apply to all cases of death in harness occurring on or after August 1, 1997". The husband of the applicant No.1 in the OA died on 14.7.99 while performing his official duties. This fact is not denied by the review applicants. The date of death also conforms to the stipulation contained in the OM. Therefore, it cannot be said that the Tribunal has granted the claim of the applicant in the OA without justification. The review applicants have brought to our notice 12 circumstances of death for claiming the benefit. The first clause itself says that "death as a result of an accident or otherwise of a Group-D employee...". Thus the main ground of challenge in the RA that the case is not covered by the OM dated 11.9.98 goes. They have also brought to our notice the conditions governing the payment of ex-gratia lump sum compensation and guidelines to be observed. It is worthwhile to reproduce the conditions stipulated therein, hereunder:

"The main condition to be satisfied for the payment of the ex-gratia lumpsum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of bonafide official duties. In other words, a ^ucasual connection should be established between the occurrence of death and government service."

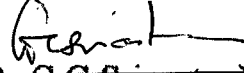
5. It is a fact that death of the railway employee occurred in the actual performance of his bonafide official duties and there is a nexus between the occurrence of death and government service. Thus the main condition has been satisfied. As far as ^ucasual connection is concerned, a strong connection, ~~not a casual connection~~, has been established between the occurrence of death and government service. Moreover, in the third paragraph of the conditions, it is mentioned that "the benefit of reasonable doubt will be extended more liberally in field service cases, as provided in the guidelines for conceding attributability of disablement or death to Government servants forming part of the CCS (Extraordinary Pension) Rules". Though this condition applies in cases of field service only, taking a cue from this, it can be fairly concluded that the death occurred due to reasons attributable to the duty he was performing at the time of the incident, though it was not an accident. In view of the above circumstances, the whole foundation of challenge put up by the review applicants crumbles. We are of the firm opinion that the Tribunal has rightly allowed the claim of the applicant in OA No.524/04 with sufficient support of the guidelines and conditions contained in the OM dated 11.9.98.

6. Hon'ble Supreme Court in 2004 SCC (L&S) 160 – Union of India Vs. T.R. Das, has held that the Tribunal cannot act as an appellate court for reviewing the original order. In 2005 SCC L&S 754 – M.P. Electricity Board Vs. T.N. Patel, the Apex Court has observed that while deciding review, the Tribunal or High Court may not act as an Appellate Court. Unless the error is plain and apparent, the Tribunal has no jurisdiction to review its orders.

7. In our considered view, no valid or cogent ground has been indicated by the review applicants warranting our interference under

Section 22 (3) (f) to review the order passed by this Tribunal in OA No.524/04. The RA is dismissed.




(A.K. Gaur)
Judicial Member

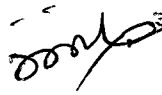

(Dr. G.C. Srivastva)
Vice Chairman

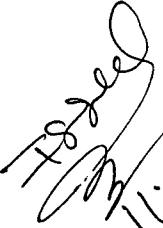
aa.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अद्योतित:-

- (1) सचिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जबलपुर
- (2) अध्यक्ष श्री/श्रीमती/व्यु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/व्यु.....के काउंसल
- (4) सहायक, को.प्र.अ., जबलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाई हेतु


M. R. Chandra



उप-सचिव


2.11.06